

November 9, 2016

VIA ECF

Honorable William H. Pauley III  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Sergeants Benevolent Assoc. Health & Welfare Fund v. Fougera Pharms., Inc., et al.*, No. 16-cv-07229-WHP; *Sergeants Benevolent Assoc. Health & Welfare Fund v. Fougera Pharms., Inc., et al.*, No. 16-cv-07987-WHP; *NECA-IBEW Welfare Trust Fund v. Akorn, Inc., et al.*, No. 16-cv-08109-WHP; *Plumbers & Pipefitters Local 178 Health & Welfare Trust Fund v. Fougera Pharms. Inc., et al.*, No. 16-cv-08374-WHP; *United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund v. Fougera Pharms., Inc., et al.*, No. 16-cv-07979-WHP; *A.F. of L.-A.G.C Building Trades Welfare Plan v. Akorn, Inc., et al.*, No. 16-cv-08469-WHP; and *International Union of Op. Eng. Local 30 Benefits Fund v. Fougera Pharms, Inc., et al.*, No. 16-cv-08539-WHP

Dear Judge Pauley:

Counsel for the parties in the above-listed actions jointly write to address certain agreements among the parties concerning (i) service of the complaints in the above-listed actions; (ii) the filing of one or more consolidated complaints; and (iii) Defendants' responses to any or all of the complaints.

The first-filed action (*Sergeants Benevolent*, No. 16-cv-07229-WHP) was filed on September 15, 2016. Of the seven actions, four involve clobetasol only; two involve both clobetasol and desonide; and one involves desonide only. The named defendants are not the same in each action. For purposes of this letter, "Defendants" refers to the following defendants only: Fougera Pharmaceuticals, Inc., Sandoz, Inc., Akorn, Inc., Hi-Tech Pharmacal Co., Inc., Perrigo Company PLC, Perrigo New York, Inc., Taro Pharmaceutical Industries LTD., Taro Pharmaceuticals USA, Inc., Morton Grove Pharmaceuticals, and Wockhardt USA LLC. In light

of the various filings and deadlines, the potential briefing on the issues of consolidation and the appointment of interim lead counsel, Plaintiffs and Defendants have conferred and have agreed to and propose the following:

1. Defendants, to the extent that they have not yet been served with process, agree to waive service of the summonses and complaints filed in the above-listed actions;<sup>1</sup>
2. Defendants need not respond to any of the complaints filed in the above-listed cases until after the Court issues an order resolving the issues of consolidation and leadership;<sup>2</sup>
3. No later than ten (10) business days following the latter of the appointment of interim lead counsel or a determination on consolidation, the parties shall meet and confer regarding dates for further proceedings in accordance with any scheduling order entered by the Court; and
4. These agreements are entered into without prejudice to any party seeking interim relief.

Based on the foregoing, the parties respectfully request that the Court endorse this letter, giving effect to the requested schedule.

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<sup>1</sup> Other than insufficient service of process, Defendants do not waive any objection or defense, including but not limited to lack of personal jurisdiction.

<sup>2</sup> On October 18, 2016, the Court endorsed a letter-motion submitted in the first *Sergeants Benevolent* action (1) providing that certain defendants would waive service, (2) extending plaintiffs' deadline to submit an amended complaint pursuant to Fed. R. Civ. P. 15(a)(1)(A), and (3) setting a deadline for defendants to respond to the amended complaint. *See* Case No. 16-cv-07229-WHP, Dkt. No. 29. The protocol in this letter is intended to supersede the existing *Sergeants Benevolent* agreement and conform the schedules in all pending cases.

Respectfully submitted,

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